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HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.14 of 2006

PETITIONER : ASHOK KUMAR MEHRA ALIAS PAPPU
aged about 49 years S/o Shri Daulat Ram
R/o Ganjpara, Durg, Tahsil & District-Durg (C.G.)

Versus

RESPONDENTS :
1) SMT. RAGINI DEVI
W/o Shri Dhruv Kumar
Caste Mehttar
R/o Ganjpara, Utkal Colony, Durg, Tahsil & District-Durg (C.G.)
2. DISTRICT ELECTION OFFICER
Through Collector, Durg (C.G.)
3. RETURNING OFFICER
(Municipal Corporation)
Local Body Elections, Durg, Tahsil & District-Durg (C.G.)
4. UMESH MESHRAM
S/o Yashwant Meshram
R/o Gautam Buddha Nagar Urla, Tahsil & District-Durg (C.G.)
5. CHHABI LAL
S/o Atlab, R/o Ganjpara, Durg Tahsil & District-Durg (C.G.)
6. SUSHIL KUMAR
S/o Manna Lal, R/o Diprapara, Durg, Tahsil & District-Durg (C.G.)

PRESENT:-
Shri V.G.Tamaskar, Counsel for the petitioner.
Shri N.S.Dhurandhar, counsel for the respondent No.1.
Shri Akhil Agrawal, P.L. for the State.

ORDER
(Passed on 02-04-2007)

The following order of the Court was passed by **Dilip Raosaheb Deshmukh, J.**

The petitioner is aggrieved by an order dated 19-01-2006 passed by the District Judge, Durg in Misc. Judicial Case No.14 of 2005 whereby the election petition filed by the respondent No.1 under Section-441 of the Chhattisgarh Municipal Corporation Act, 1956 (hereinafter referred to as "Act") for declaring the election of the petitioner herein void, was allowed.

(2) Brief undisputed facts are that the petitioner contested the election for the post of Counselor from Ward No.37, Azad Ward, Municipal Corporation, Durg reserved for Scheduled Caste candidates only for the period December-2004-2009 and was declared elected. The respondent No.1 herein was also a candidate in the said election for the post of counselor.

(3) The respondent No.1 pleaded before the District Judge, Durg that during scrutiny of nomination papers on 02-12-2004, an objection raised by her representative before the Returning Officer that the petitioner herein was disqualified not being a member of Scheduled Caste was turned down. Polling was held on 14-12-2004 and after counting of votes, the petitioner herein was declared elected. The respondent No.1 also pleaded that the petitioner herein was originally a resident of Punjab and was "Punjabi Rajput" by caste which was also borne out from his school transfer certificate. It was also contended that in the school transfer certificate of the petitioner herein, his caste was mentioned as "Punjabi". The application filed by the petitioner herein for issuance of a caste certificate under "Mehra" category had also been dismissed by the Naib Tehsildar. In this manner, the petitioner herein neither belonged to the Schedule Caste category nor had any caste certificate to that effect. It was specifically contended that the petitioner herein had, in the nomination papers falsely shown that he was "Mehra" by caste which fell under the category of Scheduled Caste.

(4) The petitioner herein refused the notice issued by the learned District Judge and was proceeded ex-parte on 15-03-2005. Ex-parte evidence of the respondent No.1 herein was closed on 18-11-2005 and the arguments were finally heard on 25-11-2005 and the case was posted for orders on 01-12-2005. On the date of order i.e. 01-12-2005, an application under Order-9 Rule-7 of C.P.C. was filed by the petitioner herein for setting aside the ex-parte order and also for affording him an opportunity of hearing which was dismissed on10-01-2006 on the ground that hearing having concluded the application under Order-9 Rule-7 of C.P.C. was not maintainable and it was open to the petitioner herein to file an application under Order-9 Rule-13 of C.P.C. However, the petitioner herein did not choose to file any application under Order-9 Rule-13 of

C.P.C. and preferred this Civil Revision under Section-441 (F) (2) of the Act.

(5) Shri V.G.Tamaskar, learned counsel for the petitioner argued as follows:-

(a) That the election petition was not duly verified and was therefore liable to be dismissed. Reliance was placed on **Regu Mahesh alias Regu Maheshwar Rao Vs. Rajendra Pratap Bhanj Dev and Another** reported in **(2204) 1 Supreme Court Cases-46 and Ajay Kumar Poeia Vs. Shyam and Others** reported in **AIR-2004-SUPREME COURT-1941.**

(b) That the election petition was liable to be dismissed since an affidavit in support of the petition was not filed.

(c) That an application under Order-9 Rule-7 C.P.C. for giving an opportunity of hearing was rejected without application of mind. Reliance was placed on **Bhanu Kumar Jain Vs. Archana Kumar and Another** reported in **(2005) 1 Supreme Court Cases-787.**

(d) That the Naib Tehsildar who issued the caste certificate was neither summoned nor examined as witness, in the absence of which, the genuineness of the assertion of the caste of the petitioner herein could not be determined.

(6) On the other hand, Shri N.S. Dhurandhar, learned counsel for the respondent No.1 argued in support of the impugned order and pointed out that the petition under Section-441 of the Act was not only duly verified but was also supported by an affidavit of the respondent No.1 herein. It was also contended that the case law cited relates to a case under the Representation of People Act and does not come to the rescue of the petitioner herein in any manner. It was also contended that in Misc. Judicial Case No.14 of 2005, hearing having been concluded, an application under Order-9 Rule-7 of C.P.C. did not lie on the date of pronouncement of order and was therefore rightly dismissed. Lastly, it was submitted that it was not the case of the respondent No.1 that the petitioner herein had filed a false caste certificate showing his caste as

"Mehra" but the case of the respondent No.1 herein before the District Judge, Durg was that the petitioner herein did not possess any caste certificate and had filed a false nomination paper and affidavit before the Returning Officer showing him as belonging to the Scheduled Caste category.

(7) Having heard rival submissions, I have perused the record of Misc. Judicial Case No. 14 of 2005. I am of the considered opinion that for the reasons mentioned hereunder, this Civil Revision must fail. Under Section-441 of the Act, any decision of the Court on an election petition is open to challenge on any of the following grounds:-

(a) That the decision is contrary to law, and;

(b) That the Court has exercised jurisdiction not vested in it by law or has failed to exercise jurisdiction vested in it by law.

(8) Arguments advanced by learned counsel for the petitioner herein would therefore be required to be tested on the above touchstone only. So far as the contention of learned counsel for the petitioner herein that the election petition was neither verified nor supported with an affidavit is concerned, it is liable to outright rejection since the election petition under Section-441 of the Act is not only duly verified but was also supported by an affidavit of the respondent No.1 herein.

(9) It is settled law that the remedy under Order-9 Rule-7 of C.P.C. for filing an application by the defendant for being afforded an opportunity of hearing is available before the conclusion of hearing and not thereafter. In the present case, the arguments were finally heard on 25-11-2005 and the case was posted for orders on 01-12-2005. An application under Order-9 Rule-7 of C.P.C. filed on 01-12-2005 was therefore liable to outright rejection and was rightly dismissed by the Court below. The case of **Bhanu Kumar Jain (Supra)** cited by learned counsel for the respondent No.1 herein is clearly distinguishable and does not apply to the present case.

(10) It is not the case of the respondent No.1 that the petitioner had filed a bogus caste certificate before the Returning Officer. It was specifically

pleaded that the petitioner herein did not possess any caste certificate and had filed a false nomination paper and affidavit. This question not being agitated by the petitioner herein before the lower Court in any manner as the petitioner herein was proceeded ex-parte completely destroys the arguments advanced by learned counsel for the petitioner herein in para-4(d) Supra. The respondent No.1 herein had proved the certified copy of the nomination papers Ex.P-3 and the affidavit Ex.P-4 filed by the petitioner herein showing his caste as "Mehra" which falls under the Scheduled Caste category. The wholly unrebutted evidence led by the respondent No.1 herein, oral as well as documentary clearly goes to show that the petitioner herein is a "Punjabi Rajput" and does not belong to the Scheduled Caste category. School leaving certificates Ex.P-1 & P-2 and a written objection made by the respondent No.1 herein before the Collector, Durg Ex.P-6 and copy of the order passed by the Naib Tehsildar vide Ex.P-8 whereby the application filed by the petitioner herein for issuance of caste certificate under "Mehra" caste belonging to the Scheduled Caste category, was rejected and the memo sent by the Naib Tehsildar Ex.P-9 and the entry in the school admission register Ex.P-7 having been unrebutted clearly proved that the petitioner herein belongs to the "Punjabi Rajput" category and not to the Scheduled Caste category of "Mehra". In this view of the matter, the petitioner herein was disqualified from contesting election for the post of counselor.

(11) Having thus considered the arguments advanced by learned counsel for the petitioner herein and after perusing the record of Misc. Case No.14 of 2005, I am of the considered opinion that no ground whatsoever is made out for any interference in the impugned order passed by the learned District Judge, Durg.

(12) In the result, this Civil Revision being devoid of merit is liable to be and is accordingly dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge